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April 12, 2016

To: Supervisor Hilda L. Solis, Chair
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: Sachi A. Hamai
Chief Executive Officer

WASHINGTON, D.C. UPDATE ON SECTION 1115 WAIVER OF MEDICAID INMATE EXCLUSION

Executive Summary

This memorandum is to inform you that, unless otherwise directed by the Board, the County will sign onto the attached National Association of Counties (NACo) letter to Health and Human Services (HHS) Secretary Sylvia Matthews Burwell, urging that the Centers for Medicare and Medicaid Services (CMS) consider issuing new Section 1115 waivers that would allow states and counties to make greater use of Medicaid funds to provide services to inmates of public institutions, including county jails.

Background

Current law prohibits Federal financial participation (FFP) to help finance the cost of health services to inmates of a public institution, such as a state prison or county jail, who otherwise would be Medicaid eligible. This prohibition commonly is called the Medicaid "inmate exclusion." Under the Affordable Care Act's Medicaid expansion to cover adults who neither are aged, disabled, nor parents of dependent children, the vast majority of the County's jail inmates would be eligible for Medicaid if it were not for the inmate exclusion.

As indicated in the attached NACo letter, health outcomes for inmates should improve, and long term medical costs for both the Medicaid program and counties should drop if states and counties were allowed to use Medicaid FFP to provide care to inmates who otherwise would be Medicaid eligible. This could be demonstrated and evaluated if

CMS were to allow states to use Section 1115 Medicaid waivers for such purposes, as recommended by NACo. This approach would be similar to how CMS has begun to encourage states to use Section 1115 Medicaid waivers to serve persons with substance abuse disorders (SUD), including those in residential facilities which otherwise would be subject to the Medicaid institution for mental disease (IMD) exclusion. Last year, California became the first state to receive a Section 1115 waiver to provide short-term inpatient and residential SUD services to individuals in an IMD.

No legislation is needed for CMS to waive the Medicaid inmate exclusion through a Section 1115 waiver because it has the administrative authority to do so. **Support for the use of Section 1115 waivers to waive this exclusion is consistent with a policy in the County's Federal Legislative Agenda to support proposals which would expand Medicaid to more persons, including persons in state and local detention facilities whose health needs, otherwise, must be met by the County.**

We will continue to keep you advised.

SAH:JJ:MR
MT:lm

Attachment

c: All Department Heads
Legislative Strategist

NATIONAL ASSOCIATION of COUNTIES NACo

Attachment

April XX, 2016

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Ave, SW
Washington, DC 20201

CC: Cecilia Muñoz, Director, Domestic Policy Council, the White House
Jerry Abramson, Director, Intergovernmental Affairs, the White House
Andy Slavitt, Acting Administrator, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services
Vikki Wachino, Deputy Administrator and Director, Center for Medicaid and CHIP Services, Centers for Medicare and Medicaid Services, U.S. Dept. of Health and Human Services

Dear Secretary Burwell:

As the chief elected officials from some of the nation's largest jurisdictions, we kindly ask CMS to consider issuing a new, narrowly crafted Section 1115 Medicaid waiver that would offer states and counties tools to improve outcomes for Medicaid beneficiaries in local jails who are without access to benefits due to the statutory exclusion of federal financial participation (FFP) for services provided to inmates of public institutions (inmate exclusion).

Counties take our responsibility for protecting the health and well-being of our 305 million residents seriously, investing almost $83 billion in community health annually. Through 714 county-owned and supported long-term care facilities, 976 county-supported hospitals, 750 county behavioral health authorities and 1,592 local public health departments, counties deliver a wide range of health services, including many that are eligible for Medicaid reimbursement. Additionally, counties and other local governments help finance the Medicaid program, contributing $28 billion to the non-federal share in 2012.

In addition to the $83 billion spent on community health, counties spend another $93 billion annually on justice and public safety services, including the entire cost of medical care for all arrested and detained individuals in jails. Counties are required by federal and state law to provide adequate health care for the approximately 11.4 million individuals who pass through county jails each year, two-thirds of whom are held in pre-trial detention simply because they cannot afford to post bond. Counties, often through their behavioral health programs, are developing innovative systems of care that link this population to community-based resources but face challenges. Most states terminate Medicaid benefits for inmates, instead of suspending them as CMS has long encouraged, and it can take months for former inmates to reenroll and for benefits to be restored upon reentry into the community. This is even more concerning considering that more than 95

percent of jail inmates eventually return to our communities, bringing both their physical and behavioral health conditions with them. In fact, serious mental illnesses are three to four times more prevalent among inmates than the general population, and almost three quarters also have substance abuse disorders

From the county perspective – at the intersection of the local health and justice systems – we suggest that a new narrowly targeted Inmate Waiver could improve the ability of counties to provide access to appropriate, targeted health services and substance abuse treatment to this population. We believe that it would result in reduced medical costs to both the Medicaid program and to counties. Importantly, it would also help reduce health disparities, recidivism and the disproportionate burden of incarceration on individuals and communities of color.

We offer for your consideration some potential components of an Inmate Waiver which NACo partners and stakeholders have proposed:

- Allow states and counties to use FFP to work with Medicaid providers to identify patients in county jails who are receiving community-based care and then to maintain their treatment protocols. Better coordinating care would reduce the need for in- patient hospitalizations of inmates under the inpatient exception to the Medicaid inmate exclusion, thereby reducing Medicaid spending and reducing health disparities for justice-involved beneficiaries. This would also have the important public health benefit of limiting the proliferation of medication-resistant viruses that result when treatment is interrupted – a frequent occurrence in jails with infectious diseases such as HIV and Hepatitis C.

- Allow states and counties to use FFP for Medicaid providers to work with county jails to develop treatment and continuity of care plans for released or diverted individuals. Access to care upon release or diversion from jail is essential to good health outcomes – especially in the crucial 24 to 72 hours after release or diversion. Delays in re-activating Medicaid increase overall Medicaid costs, lead to treatment interruptions and can adversely impact communities, especially when access to psychotropic medications is hindered. Allowing the use of FFP to prescribe and dispense treatment prior to the point of release or diversion would reduce Medicaid spending and improve the health and safety of individuals and communities.

- Allow states and counties to use FFP to initiate medication-assisted therapy or other forms of medically necessary and appropriate intervention for jailed individuals with opiate addiction whose release is anticipated within 7 to 10 days. Many individuals booked into county jails have previously undiagnosed and untreated disorders. Allowing FFP to be used to cover the costs of treatment prior to release would prevent medical disorders from deteriorating upon release and save federal dollars. A disproportionate number of unintentional overdoses occur after release from jail, and such interventions can avoid these tragedies and improve overall health outcomes.

- Allow states and counties to use FFP to reimburse peer counselors to facilitate reentry and increase jailed individuals' health literacy. This has been shown to be cost effective in the Center for Medicare and Medicaid Innovation Transitions Project demonstration.

- Allow states and counties to waive the state-wide requirement in order to permit implementation of the new Inmate Waiver in counties with the capacity and desire to implement and test the demonstration projects.

We thank you for your attention to our request and look forward to continuing to work with you to improve the effectiveness of the Medicaid program for the benefit of the people it serves. For additional information, please do not hesitate to contact Brian Bowden, NACo Associate Legislative Director for Health, at 202.942.4275 or bbowden@naco.org.

Sincerely,